

REMARKS

Presently, Claims 1-9 and 11-14 stand rejected. Claims 1, 2 and 14 are currently amended. Claims 9, 10 and 12-13 are canceled. Claims 1-8, 11 and 14 are presently pending in the application. Favorable reconsideration of the application in view of the following remarks is earnestly solicited.

Interview Summary:

Applicant thanks the examiner for granting a telephonic interview on March 10, 2010. During the interview agreement with respect to the claims was not reached. The examiner indicated that he had recently discovered a Russian patent document which, pending translation, may disclose ophthalmic compositions containing B vitamins. As that reference has not been cited, nor made known to the Applicant, no remarks will be made regarding the reference. The Examiner further indicated that ascertains made relating to improved or unexpected results should be supported by evidence.

Rejection Under 35 U.S.C. § 103(a) over Mowrey-McKee et al. in view of Tuyl:

In section 4 of the Office Action dated October 28, 2009, the Examiner has rejected claims 1-4, 7-9 and 11-14 under 35 U.S.C. § 103(a) as being unpatentable over Mowrey-McKee et al. (U.S. Patent 5,817,277) in view of European Patent Application Publication EP0 734,732 (hereinafter "Tuyl").

As discussed in the Examiner interview Tuyl does not disclose B vitamins other than riboflavin. The riboflavin disclosed by Tuyl is for use as a colorant and not as a preservative enhancer. As Tuyl fails to disclose the claimed preservative enhancers, it is respectfully urged that this rejection is now moot.

Rejection Under 35 U.S.C. § 103(a) over Mowrey-McKee et al. in view of Tuyl and further in view of De Bruiju et al.:

In section 5 of the Office Action dated October 28, 2009, the Examiner has rejected claims 1-4, 7-9 and 11-14 under 35 U.S.C. § 103(a) as being unpatentable over Mowrey-McKee et al. as modified by Tuyl and further in view of De Bruiju et al. (U.S. Patent 6,162,393). As discussed above, the amendment to the claims renders

the rejection under Tuyl moot. Therefore, it is respectfully requested that this rejection be reconsidered and withdrawn.

Rejection Under 35 U.S.C. § 103(a) over Mowrey-McKee et al. in view of Evans:

In section 6 of the Office Action dated October 28, 2009, the Examiner has rejected claims 1-4, 7-9 and 11-14 under 35 U.S.C. § 103(a) as being unpatentable over Mowrey-McKee et al. in view of British Patent Specification Publication GB 1,431,841 (hereinafter “Evans”). Reconsideration in light of this amendment and remarks below is earnestly solicited.

First, the instant claims have been amended to recite a contact lens solution, while the broader claims directed to an ophthalmic solutions have been cancelled. Evans is directed to an ophthalmic solution for the treatment of ophthalmic disorders (for example cataract and glaucoma). By contrast the instant claims are limited to contact lens solutions. Contact lens solutions are solutions used to clean and care for contact lenses. By contrast, the treatment disclosed by Evans is an eye treatment to treat ophthalmic disorders. Evans does not disclose a contact lens solution. As the instant claims are limited to contact lens solutions and not the broader application of any ophthalmic solution, it is requested that this rejection be reconsider and withdrawn.

Second, the instant claims provide surprising results. The inclusion of specific B-vitamins in a contact lens solution containing a cationic polymeric preservative surprisingly increase the preservative efficacy of the solution. Applicant kindly directs the examiner’s attention to Paragraphs [0028] – [0029] of the application. As shown in Example 2, the solution containing both the preservative enhancer dexpanthenol and the cationic polymeric preservative PHMB has greatly improved preservative efficacy when compared to the solution containing no dexpanthenol.

Finally, Evans fails to indicate that the B vitamin concentration should be adjusted. The Examiner indicates that Evans discloses that the quantities of vitamins, including the B vitamins, may be adjusted according to the disorder being treated. Applicant kindly directs the Examiner’s attention to page 2, lines 10-14 indicating that a multiple of the basic disclosed formula may be utilized. Evans indicates that the basic formula may be multiplied to increase the dosage but while keeping the general proportion of concentrations the same. This is further evidenced on page 2, lines 76-99 wherein Evans indicates that the concentrations vitamin A, vitamin E,

vitamin C, calcium and niacin may be increased to specified amounts, but that “the remaining ingredients should however remain substantially as stated.” Evans teaches the importance of retaining the specific concentration of B vitamins disclosed. On page 1, lines 63-79 Evans indicates that it is essential that B vitamins be given in relative proportions disclosed by the specific formula on page 2. When reading Evans as a whole, and because of the numerous examples, one of ordinary skill in the art would be inclined to use the B vitamin concentration as stated by Evans. Therefore, it is respectfully urged that Evans has been misconstrued and that this rejection be reconsidered and withdrawn.

Rejection Under 35 U.S.C. § 103(a) over Mowrey-McKee et al. in view of Evans and further in view of De Bruiju et al.:

In section 7 of the Office Action dated October 28, 2009, the Examiner has rejected claims 1-9 and 11-14 under 35 U.S.C. § 103(a) as being unpatentable over Mowrey-McKee et al. as modified by Evans and further in view of De Bruiju et al. For the reasons discussed above, Evans does not teach all of the claimed limitations, does not relate to contact lens solutions and the instant claims provide surprising results. Therefore, it is respectfully requested that this rejection be reconsidered and withdrawn.

Double Patenting:

In Section 8 of the Office Action dated October 28, 2009, the Examiner has provisionally rejected claim 10 under 35 U.S.C. § 101 as claiming the same invention as that of claim 11 of copending Application No. 11/620,318. In Section 9 of the Office Action dated October 28, 2009, the Examiner has further provisionally rejected claims 1-11 under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-14 of copending Application No. 11/620,318. As these are provisional rejections, Applicant will consider filing a terminal disclaimer upon the indication of allowable claims or the “provisional” double patenting rejection is the only rejection remaining in this or at least one of the above listed applications.

Conclusion:

It is believed that the foregoing is a complete response and that the claims are in condition for allowance. Applicant requests that a timely Notice of Allowance be issued in this case.

Applicant appreciates the opportunity to call the Examiner but believes that this amendment to the claims and the forgoing remarks fully address the issues raised by the Examiner. On the other hand, the Examiner is invited to call the undersigned attorney if he has any matters to address that will facilitate allowance of the application.

In the event that Applicant has overlooked the need for an extension of time, additional extension of time, payment of fee, or additional payment of fee, Applicant hereby conditionally petitions therefore and authorizes that any changes be made to Deposit Account No.: 50-3010.

Respectfully submitted,

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